

State of New Hampshire
Board of Chiropractic Examiners
Newsletter

December 2009

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The Honorable John
Lynch

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Continuing Education Credits

The NH Board of Chiropractic Examiners receives several requests for CEU approvals each year, especially during license renewal periods. We receive these requests from State Associations, course organizers, and individual licensees. Each request is subject to our Law (RSA-316-A:20) and Administrative Rules (Ch. 404.01.)

In part, RSA-316-A:20 states that "...continuing education approved by or conducted by the ICA, ACA or the NHBCE, or any state-chartered chiropractic school or college" is automatically pre-approved for continuing education. In addition, up to 4 hours of credit for emergency and first aid courses sponsored by the American Red Cross or American Heart Association shall be approved. Other non-approved courses may be considered by the Board by requesting pre-approval as part of Administrative Rule Ch 405.01.

Each licensee shall obtain at least 20 hours of continuing education biennially. Courses can be completed by attendance of the course, or by electronic participation. Electronic participation shall not be more than 25 percent of the total biennial requirement (5 credit hours.) Also, be aware that a course requiring electronic participation must include a receipt of a passing score of 80 percent or higher to be eligible for CEUs.

Take the time to be familiar with the Law and Administrative Board Rules regarding continuing education requirements in order to avoid denial of you license renewal. Should you have any questions regarding the approval or disapproval of continuing education you have taken or are considering taking, call the Board office at 603-271-4560 and we would be happy to assist you.

John Boyden, II, D.C.
Board Member

License Renewals

This year, our Board had several doctors submit their license renewal information late. This is not condoned by the Board.

When you receive any correspondence from the Board office, you should respond in a timely and appropriate fashion. Repeated violations to our State Law and Administrative Rules may result in a variety of outcomes including the suspension of your license.

LOOKING CLOSELY AT OUR CHIROPRACTIC LAW - RSA 316-A

As many of you know, I have been advocating for updating RSA 316-A for over 10 years. For a variety of reasons, it has yet to occur. There are many reasons we need to update this law. It is outdated and restricts the chiropractors in the state of New Hampshire from providing their patients all the services for which they are trained. Furthermore, had our current law defined *manipulation* as being in the sole purview of chiropractic, we may have been able to prevent physical therapists from performing manipulative therapy.

Why do I feel so strongly about the need to update our practice act? Over the last 25 plus years that I have practiced in New Hampshire, I have seen the scope of what we do as chiropractors steadily eroding - not by statute, but by the restrictions imposed by the insurance companies. Insurers have refused to pay for extremity manipulation, electrodiagnostic procedures when performed by qualified chiropractors, and they pay us markedly less than MDs, DOs, or PTs for examinations, therapies and even manipulation. Insurers restrict us from using advanced diagnostic and lab procedures, such as MRI and CT, by refusing to pay for them if we order them. We are paid ridiculously low fees for our x-ray services. The insurers pay us virtually nothing for physiotherapies and rehab procedures. When I began practicing in New Hampshire 25 years ago, this was not the case.

New doctors are graduating with greater debt than ever before while at the same time insurers are paying for less and less at lower and lower fees. Some are not able to make it financially. Other financially stressed chiropractors are taking short-cuts and some are committing outright fraud in an attempt to keep their heads above water. While we can understand their plight, we cannot condone these activities, and the government is looking for them.

The IRS Healthcare Fraud – Criminal Investigation (CI) unit is actively pursuing those committing these frauds. On their website the IRS states that “Currently, CI is involved in the following areas of healthcare fraud: false billings ...chiropractic fraud ... and patient referral (kickbacks) schemes.” They prosecute and incarcerate those who participate in these activities. In FY 2009 they incarcerated over 79% of those they indicted, for an average of 24 months.

Under our current practice act, chiropractors in New Hampshire cannot participate in a preceptorship-extern program. This program allows chiropractic students to complete their clinical training in the office of a licensed chiropractor. The educational benefits are obvious and help to better prepare chiropractors to successfully enter the healthcare marketplace; while simultaneously helping the preceptor-chiropractor stay up-to-date academically. New Hampshire is one of only 13 states which do not allow preceptor-extern programs. As a consequence, we are at a competitive disadvantage when recruiting the best associate doctors.

The Board cannot issue a temporary license. Therefore, a chiropractor who travels with an athletic team from another state must have a NH license to treat his players while they are at an event in our state. This cuts both ways as many states look at our statute to see if we allow “travel to treat” before they will allow our doctors to “travel to treat” athletes in their state.

There are currently 33 states and the District of Columbia that allow chiropractors to use the title “chiropractic physician.” In the Federal Register and federal health care laws, chiropractors are routinely called *chiropractic physicians*. New Hampshire is one of only 17 states that do not allow their licensees to use this title. While seemingly trivial, some laws are written with language that only allows *physicians* to participate in certain programs or do examinations for specific circumstances. In the past, insurers have stated that they will not pay for various tests ordered or procedures performed by chiropractors because we are not “physicians.” They have made these denials despite these procedures clearly falling within our scope of practice and expertise.

New Hampshire has the second lowest continuing education requirement in the country. It will soon be the lowest! We currently require 20 hours per biennium (10 hours per year). Hawaii also requires 10 hours per year and New Jersey

requires no continuing education. However, there is a bill moving through the New Jersey legislature that will require continuing education for chiropractors and it will be more than 10 hours per year. At the moment, the average number of continuing education required by all the states is 17.67 hours a year with KS and IL requiring a high of 50 hours, IA and VA requiring 30 hours, and a total of 19 states requiring more than 20 hours per year. While we may not need 50 hours a year, we certainly don't want to be trailing the rest of the country in assuring that our doctors are practicing at the highest and most modern standards.

There are members of our profession who wish to practice acupuncture and animal chiropractic. Without changes to our statute they will be in conflict with the acupuncture and veterinary boards, respectively. There is currently no allowance in the statute for the practice of manipulation under anesthesia. While many of us may not want to offer these services in our practices, we need to assure that our statute allows chiropractors to offer the widest possible array of chiropractic services to our patients. This can only be done if our statute is modern and allows for continued growth of our profession. The current statute does not do this.

The Board recognized that we needed to update our practice act. During the summer of 2008, I met numerous times with one of the state's administrative law attorneys to redraft RSA 316-A to address these issues. The rewriting of the statute was accomplished using a list of changes that the Board felt was needed based on eight years of rewriting the Board's Administrative Rules. During this time various members of the Board kept a "wish list" of necessary changes. Each time we tried to write rules for one of these scenarios, and were told that we did not have the legislative authority to do so, it was added to the "wish list." I took this information and with the assistance of the administrative law attorney, we rewrote the statute to assure that chiropractors did have the authority to practice this way.

In the fall of 2008, the Board voted unanimously to approve this updated statute and to present it to the Joint Legislative Committee of the two professional organizations in New Hampshire - the NH Chiropractic Association and the NH State Chiropractic Society. In both the 2008-09 and the 2009-10 legislative sessions, they have opted not to pursue this important legislation.

During this same time period, the physical therapists received a state Attorney General's opinion that they could perform manipulation. One of the reasons for their success was the weakness of our law and because it does not define manipulation as being the purview of chiropractic. Now that ship has sailed and it is unlikely that we will ever gain statutory control of manipulation.

A major cause of all the adverse changes I have witnessed over the last 25-plus years has been practitioner apathy. We all get busy in our practices and lives and it is easy to leave it up to others to protect our livelihoods and our profession. With the changes coming with healthcare reform either that will have to change or chiropractic may experience even more serious setbacks. As a professional community we need to support each other if we want to continue to thrive.

A stronger practice act protects both the public and the chiropractic profession. Remember the old business adage "growth or death." Your business is either growing or dying. The same is true of your profession. It will both grow and change with the times, or it will wither on the vine and die as the rest of the healthcare market moves on. We have already seen this. The physical therapists now have a doctor of physical therapy degree and are embracing manipulation. The advances they have made should have been ours. Sometimes you need to fight not only to improve your situation but also to maintain what you have already achieved.

Take this opportunity in the New Year to become involved again in your profession and not just your practice. Make the state associations move forward to protect your profession. Let's start being proactive instead of reactive!

Leo M. Kenney, D.C.
Chairman of the Board

Reminder...

When you receive a request for a patient's records, once you are in receipt of a properly signed authorization, you need to provide complete and accurate records within ten (10) business days. Our Board has received several complaints within the past few years that involved a doctor ignoring this Rule.

Administrative Rules Chapter 403.02(h)

Also, if you receive correspondence from our Board office, you need to read it and respond promptly.

Recent Board Rules Changes

Since our June 2009 newsletter, the Board has not adopted any changes to the Administrative Board Rules. You may access the Rules via the internet at:

www.gencourt.state.nh.us/rules/ch.html

Once you reach the website, move your cursor down the page and click on <Ch>. Then, scroll down the specific Chapter.

The chiropractic law is found in RSA 316-A

A helpful tip . . .

As a personal injury attorney for almost 15 years, I have witnessed first-hand the immense benefits that chiropractors have provided to my injured clients. Most likely most of you at one time or another will interface with attorneys, like me, who spend most of our waking hours battling with insurance carriers to convince them that our clients have suffered real physical harms and losses due to another party's negligent actions. Whether my clients' injuries are due from a car crash, slip and fall, or work-related trauma, chiropractors play a huge role in our clients' recovery.

When treating patients for accident-related injuries, please help assist the attorneys in advocating for our clients by being sure to include an accurate history as to how the accident occurred, a description of the mechanism of injury, i.e. hit head on the windshield, shoulder on the door frame, etc., a complete list of subjective complaints by the patient, your objective findings, and diagnosis and treatment plan. Also, it is very helpful to mention in your SOAP notes throughout the course of the patient's treatment the types of problems the patient is experiencing due to the accident-related injuries, i.e. neck hurts while sitting at computer at work, can't push vacuum, can't do laundry. These subjective complaints help us attorneys paint the picture of how our clients' activities of daily living have been restricted or interrupted.

Good note taking by the chiropractor is critical in not only accident-related cases but also with any treatment rendered by the chiropractor. Also, good record keeping can help facilitate payment of your bills by the insurance companies in a timely fashion.

Laura Sheppard, Esq.
Public Member of the Board



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